

Akron Catheter, Inc. a/k/a Florida Kansas Health Care, Inc. and United Paperworkers International Union, Local 1541, AFL-CIO. Case 8-CA-24617

January 28, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge and amended charges filed by United Paperworkers International Union, Local 1541, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on September 23, 1992, against Akron Catheter, Inc. a/k/a Florida Kansas Health Care, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and complaint,¹ the Respondent has failed to file an answer.

On December 24, 1992, the General Counsel filed a Motion for Summary Judgment. On December 29, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 18, 1992, notified the Respondent that unless an answer was received by November 25, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

¹ The complaint was served on the Respondent by certified mail to the Respondent's two last known addresses. Both were returned as unclaimed. The complaint was also served by regular mail to one of the last known addresses. This complaint was returned as undelivered, and marked "RETURNED TO SENDER Moved Left No Address."

Service of these documents was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992). Moreover, a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. *Id.*

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, has been engaged in manufacturing surgical catheters with an office and place of business in Chippewa Lake, Ohio. Annually, the Respondent sold and shipped from its Chippewa Lake, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including the laboratory and quality control employees for the purpose of collective bargaining with respect to wages, hours and working conditions, but excluding office clericals, professionals, guards and supervisors (foremen trainees), as defined by the Act.

Since at least May 20, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit, and since at least then the Union has been recognized by the Respondent as the representative. This recognition has been embodied in a collective-bargaining agreement which is effective from May 20, 1990, through May 19, 1993.

On or about November 28, 1991, the Respondent unilaterally changed the terms of article 21 (insurance) and exhibit "B-2" of its collective-bargaining agreement with the Union by ceasing to make the required premium payments and thereby effectively terminating all employee medical insurance benefits. On or about December 9, 1991, the Respondent unilaterally changed the terms of the Memorandum of Understanding, Credit Union section, contained in its collective-bargaining agreement with the Union by failing to deposit in employees' credit union accounts wages earned by the unit employees. On or about December 20, 1991, the Respondent unilaterally changed the terms of article 20 (vacations), and article 28 (wages) and exhibit "A" of its collective-bargaining agreement with the Union by failing to pay employees earned vacation pay and wages. On or about January 8, 1992, the Respondent unilaterally changed the terms of exhibit "B-1" of its collective-bargaining agreement

with the Union by failing to pay employee Katherine Smith required sick pay.

The Respondent engaged in these acts and conduct without appropriate notice to the Union under Section 8(d) of the Act and without having received the agreement of the Union to alter the terms of the collective-bargaining agreement. The terms and conditions of employment involved are mandatory subjects for the purpose of collective bargaining.

On or about February 3, 1992, the Respondent ceased its manufacturing operations at its Chippewa Lake, Ohio facility. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the cessation of manufacturing operations. This subject relates to wages, hours, and other terms and conditions of employment of the employees in the unit and is a mandatory subject for the purpose of collective bargaining.

CONCLUSIONS OF LAW

1. By unilaterally changing the terms of article 21 (insurance) and exhibit "B-2" by ceasing to make the required premium payments and thereby effectively terminating all employee medical insurance benefits; unilaterally changing the Memorandum of Understanding, Credit Union section, by failing to deposit in employees' credit union accounts wages earned by unit employees; unilaterally changing the terms of article 20 (vacations), and article 28 (wages) and exhibit "A" by failing to pay employees earned vacation pay and wages; and unilaterally changing the terms of exhibit "B-1" by failing to pay employee Katherine Smith required sick pay, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By ceasing its manufacturing operations at its Chippewa Lake, Ohio facility without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the cessation of manufacturing operations, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to honor the terms of its 1990-1993 collective-bargaining agreement with the Union and to make the unit employees whole for any losses attributable to its ceasing to make required

premium payments and thereby effectively terminating all employee medical insurance benefits; its failure to deposit in employees' credit union accounts wages earned by unit employees; its failure to pay employees earned vacation pay and wages; and its failure to pay employee Katherine Smith required sick pay all as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of termination of its Lake Chippewa, Ohio facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to terminate its Chippewa Lake, Ohio operations, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Union, on request, about the effects of the closure, but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the

Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Akron Catheter, Inc. a/k/a Florida Kansas Health Care, Inc., Lake Chippewa, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its 1990-1993 collective-bargaining agreement with United Paperworkers International Union, Local 1541, AFL-CIO, which is the designated exclusive bargaining representative of the Respondent's employees in the appropriate unit set forth below by unilaterally changing the terms of article 21 (insurance) and exhibit "B-2" by ceasing to make the required premium payments and thereby effectively terminating all employee medical insurance benefits; unilaterally changing the Memorandum of Understanding, Credit Union section, by failing to deposit in employees' credit union accounts wages earned by unit employees; unilaterally changing the terms of article 20 (vacations), and article 28 (wages) and exhibit "A" by failing to pay employees earned vacation pay and wages; and unilaterally changing the terms of exhibit "B-1" by failing to pay employee Katherine Smith required sick pay.

The unit is:

All production and maintenance employees including the laboratory and quality control employees for the purpose of collective bargaining with respect to wages, hours and working conditions, but excluding office clericals, professionals, guards and supervisors (foremen trainees), as defined by the Act.

(b) Ceasing its manufacturing operations at its Chippewa Lake, Ohio facility without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the cessation of manufacturing operations.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of its collective-bargaining agreement with the Union; make whole unit employees for any expenses they may have incurred as a result of the Respondent's refusal to make such health insurance premium payments; make whole employees for any losses they may have suffered as a result of the Respondent's unilaterally changing the Memorandum of Understanding, Credit Union section, by failing to deposit in employees' credit union accounts wages earned by unit employees; make whole unit employees for any losses they may have suffered as a result of the Respondent's unilaterally changing the terms of article 20 (vacations), and article 28 (wages) and exhibit "A" by failing to pay employees earned vacation pay and wages; and make whole its employee Katherine Smith for any losses she may have suffered as a result of the Respondent's unilaterally changing the terms of exhibit "B-1" by failing to pay employee Katherine Smith required sick pay.

(b) On request, bargain with the Union regarding the effects on unit employees of its cessation of operations and pay limited backpay, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Mail to all unit employees and post at its facility in Lake Chippewa, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally alter the terms of our collective-bargaining agreement with United Paperworkers International Union, Local 1541, AFL-CIO, which covers our employees in the following appropriate bargaining unit:

All production and maintenance employees including the laboratory and quality control employees for the purpose of collective bargaining with respect to wages, hours and working conditions, but excluding office clericals, professionals, guards and supervisors (foremen trainees), as defined by the Act.

WE WILL NOT refuse to provide notice and an opportunity to engage in meaningful bargaining regarding

the effects of our decision to cease operations at our Chippewa Lake, Ohio facility.

WE WILL NOT refuse to pay our employees health insurance premiums, fail to deposit in employees' credit union accounts wages earned by them, fail to pay earned vacation pay and wages, and fail to pay required sick pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of our collective-bargaining agreement and make our employees whole, with interest, for our unilateral changes in medical insurance benefits; deposits in employees' credit union accounts of wages earned; earned vacation pay and wages; and sick pay.

WE WILL, on request, bargain in good faith with the Union regarding the effects on unit employees of cessation of operations at our Chippewa Lake, Ohio facility and pay unit employees limited backpay for our failure to do so, with interest.

AKRON CATHETER, INC. A/K/A FLORIDA
KANSAS HEALTH CARE, INC.